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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 000990

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TAGS: PGOV PHUM PREL I2
SUBJECT: WHO IS BEHIND LGBT PERSECUTION IN IRAQ?

Classified By: PMIM Robert Ford for reasons 1.4 (b) and (d).

Summary

¶1. (C) The London-based Iraqi LGBT (Lesbian-Gay-Bisexual-Transgender) organization's March 30 claim that the GOI planned to execute over 100 gay men in the near future has sparked a storm of protest from gay rights activists around the world. Post has rigorously investigated the Iraqi LGBT claims with GOI and international contacts and cannot find any validity to them.

¶2. (C) An early April spate of murders of homosexual men in Baghdad was variously attributed to militias responding to calls from religious leaders to eradicate homosexuality, or to the victims' relatives seeking to reclaim family "honor." Some homosexuals (in hiding) have claimed to the press and a local NGO that the GOI security forces are the perpetrators. Meanwhile, the Ministry of the Interior (MOI) announced April 6 that murdering homosexuals is punishable by death under Iraqi law and that the security forces will hunt down the killers of the April murders. Human rights violations against gays were raised by Congressman Jared Polis during CODEL Tsongas' April 6 meeting with MP Shatha Al-Obousy, member of the parliamentary Human Rights Committee. Iraqi law on the subject of homosexuality is convoluted and open to interpretation. It is clear however, that homosexual conduct is not/not punishable by death in Iraq, nor are, to the best of our knowledge, any of the inmates currently on death row charged with crimes of homosexuality. End summary.

Dubious Iraqi LGBT Claims

¶3. (C) The March 30 claims of Iraqi LGBT, a London-based organization that seeks to protect the rights of gays, that over 100 Iraqi gay men on death row face imminent execution appear to be false. Embassy and international NGO contacts contend that Iraqi LGBT has made exaggerated claims in the past in order to increase donor support. On April 4, the Minister of Human Rights, Wijdan Salim, told Poloff, that only eight men on death row (of a total of 812) face execution during the week of April 13, and none of them is convicted of homosexuality. Charge d'Afaires raised our concerns about the reports of persecution of LGBT again with The Minister April 9 and again the Minister confirmed that no one on Iraqi death row is there because of a homosexuality conviction. Embassy Justice Attaché also raised our concerns with Iraqi officials in the Justice Ministry and the Iraqi judiciary, including the Chief Investigative Judge of the Central Criminal Court of Iraq who stated that no known inmates on death row are charged with homosexual conduct. A human rights NGO involved in assisting gay Iraqis to depart the country told us April 7 that the Karkh and Rusafa criminal courts told him that no men had been sentenced to death for being gay.

Outbreak of Violence Against Gays

¶4. (C) On April 4, Iraqi and international media reported the discovery of the bodies of six gay men in the Sadr City area. The reports propounded a likely link between the killings and recent calls by Friday prayer leaders to wipe out homosexuality. Some press reports attributed the murders to militias trying to reclaim authority lost after a GOI crackdown in May 2008. Moqtada al-Sadr's Jaysh Al-Mehdi, mentioned as a likely suspect in the deaths, denied any involvement. Other reports claimed that relatives of the men carried out the murders to reclaim family "honor."

Meanwhile, the aforementioned NGO source interviewed a gay man who said he was arrested in mid-March and beaten by GOI Qman who said he was arrested in mid-March and beaten by GOI security forces in a police station in Baghdad's Karrada district, but that he was able to bribe his way out of jail. The man alleged that five others being held with him were tortured and killed sometime between March 24 and March 26. He claimed the policemen (apparently affiliated with a militia) showed him a picture of the bodies in order to extract the bribe. The NGO, which is assisting the escapee leave the country, suspects that the bodies found in Sadr City were those of the men allegedly killed in the Karrada police station. (Note: UNHCR is apparently offering some assistance, but the NGO, which is concerned for the safety of its staff and the possibility of being expelled from Iraq should its assistance to gays become public, wishes that UNHCR would be more pro-active in its support to Iraqi homosexuals. End note.)

¶5. (C) The gay man, who is in the process of leaving Iraq, reportedly told the NGO that an active anti-gay campaign had started and gays were being hunted down. He claimed the Ministry of Defense (MOD) and Ministry of Interior (MOI) had

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issued an order for gay people to be killed if captured. (Note: The man offered no evidence. Post finds it implausible that the MOD or the MOI would instruct their officials to commit extrajudicial killings, although the possibility that elements within the security forces of either ministry, or that security officials acting on their own, might do so cannot be completely discounted. End note.)

¶6. (C) In an April 6 meeting of the Human Rights Working Group at the U.S. Embassy in Baghdad, EU, UNAMI, and UK Embassy officers noted their missions were also tracking the events and allegations. They concurred that while violence against Iraqi homosexuals appeared to be on the rise, there was no evidence to confirm Iraqi LGBT's claims of death sentences for homosexuals. EU officer noted keen interest in the matter from the Dutch parliament.

What Is the GOI Doing to Protect LGBTs?

¶7. (C) In the wake of the now widely reported deaths of the gay men, Radio Sawa's website reported on April 6 that MOI spokesperson Maj. Gen. Abdul Karim Khalaf confirmed in a phone interview that targeting homosexuals is a murder crime punishable by death under Iraqi law. Khalaf added that GOI security forces will hunt down the murderers of the gay men found in Sadr City.

¶8. (C) In an April 6 meeting with Iraqi MP and parliamentary Human Rights Committee member Shatha Al-Obousy, Congressman Jared Polis asked if human rights in Iraq extend to gays and lesbians and if a gay person could file a human rights violation complaint with the Committee without fear of retribution. (Note: Polis raised the issue in reference to testimony he had received from Iraqi men who were allegedly detained, tortured, and sentenced to death by MOI security forces for belonging to Iraqi LGBT. End note.) Al-Obousy replied that the Human Rights Committee investigates all complaints of human rights abuses it receives and that complaints can be submitted anonymously. In that case, she herself would sign the letter and follow up with the relevant

GOI entities.

Muddled Iraqi Law on Homosexual Conduct

¶9. (C) Iraqi law relating to the criminalization of homosexual conduct is convoluted and open to interpretation. The general statute applicable, Paragraph 394 of the Iraqi Penal Code, prohibits (outside of marriage) any person committing the act of "buggery," even if consensual. While Paragraph 394 leaves "buggery" undefined, traditional western legal interpretation of the term implies: "anal intercourse by a man with another man or woman." Significantly, this statute calls for terms of imprisonment only if the "victim" is under the age of 18, and does not specify a punishment in cases where the "victim" is over 18. This implies engaging in the act of "buggery" is not a crime at all if the "victim" is over the age of 18. The point is the subject of much judicial debate which needs to be resolved in an Iraqi court of law.

¶10. (C) The former regime's Revolutionary Command Council's (RCC) 2001 Decision No. 23 made the offense of sodomy punishable by death. This penalty was repealed in CPA Order No. 7 on June 10, 2003 and not reinstated in the August 8, 2004 decree of the Council of Ministers, which reinstated capital punishment in certain cases. Thus, the death penalty is not possible in cases of "buggery" or "sodomy." What remains the subject of debate is whether the CPA's repeal of the death penalty generally also served to repeal the substantive crime of sodomy as set forth in the RCC's Decision 23, or whether the crime remains on the books, but with punishment reduced from death to life imprisonment.

Comment

¶11. (C) While it is clear there is social intolerance of open homosexuality in Iraq, it is not clear that there is pervasive persecution of homosexuals in Iraq -- nor is the extent to which Iraqi security forces condone or perpetrate violence against Iraqi homosexuals clear. There are still militias active in some Baghdad districts, including in Sadr City as well, making it all the harder to determine who is responsible for the murders. Nevertheless, in the face of the recent killings and accusations of GOI complicity, the MOI's clear statement on April 6 that murdering gays is punishable by death is helpful and may help stem the current wave of violence. Senior GOI officials are certainly more sensitized to the issue, but we will need to continue to monitor the situation closely, particularly the investigations into the recent killings.

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